

The Mini-Conference on Legal Services (in preparation for the 2005 White House Conference on Aging)

The following observations and recommendations from elder law advocates from around the country were drawn from two sources of information:

- An online survey disseminated through the national ABA elder law list serve and
- A session held in conjunction with the Fifth Annual National Aging and Law Conference (NALC) in Crystal City, October 23, 2004 where more than 35 attended from various perspectives in the law and aging field.

The 1994 Mini-White House Conference made the following Recommendations: Outcome

- ☒ 10% minimum III funds for legal services; maintain as priority service.
- ☒ More \$ for LS Developers & legal counsel for LTCO
- ☒ Amend OAA to allow states to fund statewide LS
- ☒ Fund statewide LSC/AOA support centers
- ☒ Enforcement of OAA provisions on delivering of LS

These are not that different from what those who responded to the survey and who participated in the October 23rd session would recommend for the 2005 White House Conference. The three recommendations can be found on the last page.

On-line Survey Responses

The on-line survey responses are attached to this report.

NALC Session Notes

Robert Blancato, a member of the 2005 Policy Committee for the White House Conference on Aging, opened the session with an overview of the WHCoA process and expectations of the attendees at the session. This was followed by a summary of the on-line survey results and a review of the recommendations from the 1994 pre-WHCoA mini-conference on legal services and the WHCoA recommendations in the area of legal services. The participants then compiled a listing of "environmental" changes since the last WHCoA that affect legal services to older persons.

1994 to 2004 Changes in the "environment" in which legal services are provided to older persons

- **Significant rise in the numbers and needs of limited English proficient (LEP) elders** - Both the respondents to the online survey and the attendees noted that the increase of LEP elders requires more and different services as compared with the situation ten years ago. One state reported a 300% increase in Hispanic elders but noted that they were less likely to be connected to the aging network. Several commentators cited a belief that "not nearly as many people as need services in this group" actually request services. Nearly 70% of the on-line survey respondents cited "assistance in serving LEP elder" as the type of help needed by providers from federal, state and local governments.

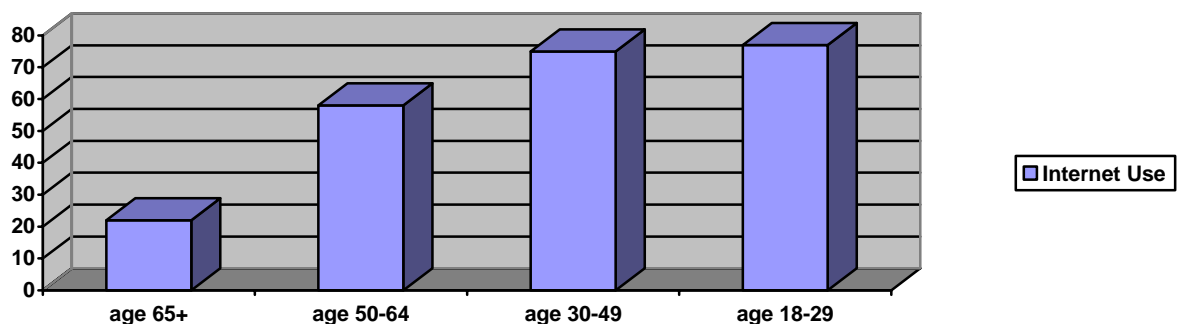
- **The elder population is changing with an increase in both the cultural diversity and the number of persons with disabilities.**
- **Elders are living longer which has had a significant impact in several areas**
 - An increase in legal issues involving caregivers, especially in the area of elder financial exploitation.
 - An increased bifurcation between the needs of "young" seniors and "old" seniors
 - A greater percentage of the elder populations are very ill elders near the end of life. Life has been extended but not necessarily the quality of life. This has implications for the law and the role of lawyers in life planning and decision-making as the prospect of more years with disabilities increases.
 - In addition there are very high consumer expectations on the remediability of age-related disabilities.
- **Financial exploitation has grown as an issue for elders** - Financial crimes against the elderly have risen, including crimes such as identity theft. As technology has transformed the commercial side of American life, it has also opened up new areas of fraud and abuse to which leaders are often more vulnerable.
- **Easy access to credit has increased the frequency and severity of debt and consumer problems** - This is a particularly challenging issue for elders who are more often on fixed incomes and who have less time to work their way out of debt.
- **"Baby Boomer" elders differ from the older generation in ways that have an impact on legal services delivery** - These younger elders tend to be more advocacy-oriented. They are more likely to move around the country and thus be less attached to community and family support systems. They are also more likely to be divorced or to have never married. They also are likely to live longer. This has significant implications for the delivery of legal services and the nature of legal services, particularly in the areas of "pro se" and "unbundled" legal services (also known as discrete task representation).
- **1994 - 2004 changes in social policy and programs have had an impact on elders** - The differential between the "haves" and "have-nots" is greater and there is danger of creating a class of poor elders. This is particular issue for low-income leaders who have been employed as domestics. There has been move towards "rugged individualism" in our social policies and this is more likely to leave gaps in services. The role of legal services in health care choices has increased. Managed care has increased the need for legal representation in this area. There has been a tightening of social services. Participants report a greater need to for legal services to provide help to navigate the various systems. The Olmstead Act has transformed the orientation from institutionalizing elders to aging in place at home.
- **The private bar is more involved in legal services for elders** - Participants noted an increase in the number of attorneys specializing in elder law or in targeting an elder population.
- **Legal services funding has remained static over the past decade**
- **Technology has opened new frontiers in the delivery of legal services to elders** - Web-based access to information and legal services has had an impact on services to elders

although it is more limited than in the younger population. Seniors tend to have less access to technology although that is changing. The Pew study of the impact of Technology on America Life shows technology access is increasing among younger elders at a greater rate than older elders. This has implications for further diversifying the methods by which legal services are delivered to elders (and thereby increasing the cost of delivering services via several channels in order to best reach out to different segments of the over 60 population). Finally there are website use issues specific to elders and these need to be made more available to legal services providers who should integrate them into public-oriented websites.

The Pew Internet and the American Life Project reports that 22% of Americans age 65 and older use the Internet

The percent of seniors who go online has jumped by 47% between 2000 and 2004.

In a February 2004 survey, 22% of Americans age 65 or older reported having access to the Internet, up from 15% in 2000. That translates to about 8 million Americans age 65 or older who use the Internet. By contrast, 58% of Americans age 50-64, 75% of 30-49 year-olds, and 77% of 18-29 year-olds currently go online.



- Impact of pro se litigation support by the courts** - There has been an increase in the courts resources to increase access to court services and functions for un-represented litigants. For example, in August 2000. The Conference of State Court Administrators approved a Position Paper on Self-Represented Litigation with 11 recommendations on meeting the needs of the self-represented through court-sponsored information systems, data collection, judicial education, protocols for the judiciary in conducting proceedings with self-represented litigants and the formation of a joint task force of the Conference of Chief Justices and COSCA to develop an action plan. In addition, in January 2001 the Conference of Chief Justices passed a resolution encouraging the “expansion of the types of legal assistance to self-represented litigants, including exploration of the role of non-attorneys”. (Resolution 23) This national effort has had different impact in different states however; it is a positive trend that should be examined for its impact on seniors who may have a greater need for advocate assistance. "There is a real need for extended representation for seniors."
- Impact of LSC restrictions and restructuring** - Participants observe that the Legal Services Corporation (LSC) restrictions and restructuring in the states make offering a full continuum of services to elders more difficult.

- There has been an increase in services as the result of the senior legal hotlines.

Recommendations

- 1. There is a growing need for the expansion of legal services for the baby boomers as well as those who are currently elderly. Realignment of public and private funded legal services programs and the expansion of other methods of providing legal services (hotlines, websites, discrete task, self-help, dispute resolution, and clinical programs) underscore the critical need for coordination of these services with each other and with other elder rights and advocacy programs, as well as the private bar.**
 - (a) Older Americans Act, Legal Services Corporation, Interest on Legal Trust Account and other public and private funding is essential to the provision of coordinated, high quality, culturally competent, affordable legal services to older persons in need. Such funding should include adequate and predictable minimum levels for legal services under the Older Americans Act.
 - (b) To support such a system and to ensure that older persons are well served by it, the Older Americans Act should provide for adequate training and support services at the national, state and local levels. The Older Americans Act should fund and each state should designate a full-time legal services developer who is empowered to take a strong leadership role.
- 2. The growth of the elderly population will necessitate more lawyers trained in elder law. To educate the next generation of lawyers about elder law, law school curricula should address ethical issues in aging such as client capacity, autonomy, and confidentiality, as well as substantive legal issues and should promote an awareness of legal issues affecting older persons with low incomes.**
- 3. While most older persons have decision-making capacity, and while capacity should be presumed, there are some instances in which an individual's capacity to make decisions about legal, financial, health care, and other personal matters may be questionable. As a result, judges, lawyers, health care providers, adult protective services workers, aging services providers, mental health care providers, psychologists and many other professionals need validated, reliable methods of assessing capacity. Experts from these fields, supported by adequate funding, should develop education and training materials and curricula on capacity assessment of older adults in a range of settings.**